

YORK COUNTY CHESAPEAKE BAY BOARD

Verbatim Minutes for a portion of the June 12, 2008 hearing

6:00 PM

- **Chesapeake Bay Exception 08-114, Mr. & Mrs. Norman Pulliam, 108 Anchor Lane:**
Request to construct a 4.5-foot wide eco-paver walk in the Resource Protection Area along Boathouse Creek.

Verbatim Minutes Begin 6:07:10 *Please note punctuation is minimal to preclude inadvertently imposing inaccurate interpretation of any speaker's comments.*

Note: Slides are shown as requested during the public hearing.

Kent Henkle, Environmental Technician: The applicant is requesting an Exception to construct a four and one half foot wide eco-paver walk in the 100 foot research protection area buffer along Boathouse Creek. The RPA buffer heavily impacts this lot due to Boathouse Creek and Warlock Cove. You can see on the area photo the path is going, well you'll see it on the next photo, about where the "e" is in Anchor Lane, out towards where there is an existing pier over that pond which isn't shown on our latest area photo, but it is constructing there. You can go to the next photo. You can see, yeah...Anna if you can move the cursor along the proposed path. You can continue along and show the pictures. *[Slides continue to be shown]* There is what the eco-stone looks like; that is four and one half foot proposed. Go to next slide. That is where the path is going to run, and you can continue with the pictures. It is going to run down on to where that pier goes out over pond and out towards the water.

Guidance provided by Chesapeake Local Assistance Department Repairing Buffers Modification Guidance Manual states that paths should be two feet wide with native vegetation or mulch used to cover exposed soil. It notes that wheelchair paths will need to be wider. The Guidance adds that impervious paving material should not be used for residential pedestrian paths except for stepping stones. The paths designed for those with disabilities can be made from semi-permeable stone compacted to an accessible surface. County Staff has proposed administrative approval of an eco-stone administrative approval up to three feet wide. The applicant is requesting four and one-half foot, and therefore this request is before the Board. The proposed eco-stone path is approximately 405 square feet of total area. The existing impervious area on the lot is approximately 17.4 percent.

Should the Board determine the application meets the finding, Staff would require the following:

Two inspections of the construction of the eco-stone path.

Mitigation will be required for the 405 square feet of RPA buffer that is being covered with the eco-stone. Because the existing impervious is over 16 percent on the lot, the total mitigation would be doubled and it would be a total of 810 square feet. 405 square feet is self mitigated with the proper installation of the eco-stone. The remaining 405 square feet will be mitigating by

buffer restoration plantings. In addition, an executed BMP maintenance agreement would be required. The recordation of the BMP maintenance agreement and the annual re-inspection won't *will* show the long term water quality function of the BMP's. I would be willing to answer any questions you have.

Mr. Russell: What did you say about the doubling? **Mr. Henkel:** With our Guidelines of the County, if you are working in the RPA, you have to mitigate for anything you are adding in the RPA. In this case, 405 square feet. If the total lot impervious is over the 16 percent threshold, you also have to mitigate that which in effect is doubling the mitigation. **Mr. Russell:** So they were at 16 percent? **Mr. Henkel:** I have them at approximately 17.4 percent impervious. That is what exists now, yes. **Mr. James:** I have a question. **Mr. Henkel:** Yes. **Mr. James:** At the site we were discussing the imperviousness of this kind of thing. Is there anything that you found since the site visit that would lead us to think that this is more pervious than the information that we were given on site, which is about 40 percent I think. **Ms. Drake:** The 40 percent number comes from turf stone, and that is a different type of paver. That is actually concrete with just open spaces that grass grows through. This is considered, it can be considered, there is not a lot of testing that we've have in York County, but if the literature from the manufacture is to be believed, it can be 100 percent pervious. It is not because that these stones are pervious. If you will note the opening is in the stone that starts with small drainage stone, and then underneath the sidewalk is basically an infiltration trench constructed with #57 drainage stone, which is the same thing we require in the infiltration process. **Mr. Henkel:** A BMP stone. **Ms. Drake:** Unhuh. **Mr. James:** My question is, is there anything that would lead us to believe that this more pervious then we thought earlier? **Mr. Henkel:** Not that I am aware of. And the County Staff does not consider this to be 100 percent pervious or it will have more perviousness, if that is a word, than some other types of driveway or walkway or something like that. **Ms. Drake:** We would consider a concrete walkway to be 100 percent impervious. We are believing the manufacturer's specifications that say that this is 100 percent self-mitigating; that no runoff will come off of this. I do not know if that answers your question. **Mr. James:** I think so. At a previous meeting, there were some discussions where contractors met with you and gave you input on what the State, or queried that, wasn't there a meeting held with some people some input on contractors that would be able to think that people were thinking that is what we normally allow three foot is not enough or what. **Ms. Drake:** There have been two meetings. Kent attended a demonstration of things being installed in James City County and then there was a public hearing, at which the Board was present, in which a citizen came forward and explained why they felt this would be better than a mulch path in certain circumstances. That's the only meetings that I am aware of. **Mr. Henkel interjects:** Joe Brogan is the one who attended the demonstration, and I attended the seminar that was put on. **Mr. James:** So the County Staff still only allows, provides for a three foot wide path. **Ms. Drake:** Right. Based on the input that we received from the Board at that public hearing, County Staff thought that it was reasonable to allow three foot wide eco-stone pavers with the proper mitigation and the proper construction. **Mr. Henkel:** Right, but we have yet to approve any. **Ms. Drake:** No, we have not approved. **Mr. Henkel:** This is the first one that is before us. **Ms. Drake:** This was, this is three foot wide with a separation, you know, essentially two 18 inch paths that totals three foot wide. That is something that we can administratively approve, but that does not meet the requirements of the property owner. **Mr. James:** Right. **Ms. Estes:** I had just one question. You had gone to a meeting in North Carolina I believe you said. **Mr. Henkel:** No, the seminar I

went to, they spoke about North Carolina. **Ms. Estes:** Ok. **Mr. Henkel:** Right. **Ms. Estes:** They have approved this. **Mr. Henkel:** Yes, according to their documentation, the State of North Carolina has let them put in driveways and parking lots that they are using, and, in some cases, if I understood them correctly, they are counting them as BMP's, as part of the development or subdivision or whatever they are doing. **Mr. Rolston:** I have a question. When you do a trench drain that is usually only good for five to seven years because it fills in; is there some reason to believe that, what is different with this, that over a period of time since it is exposed on top; you wouldn't run into the same problem with it? **Mr. Henkel:** I would assume that would have the same life span as an infiltration trench. **Mr. Rolston:** That is all I have. **Mr. Henkel:** I have one, ah, if there's no further questions, I have a letter to read into the record that was brought by the office late this afternoon. Um, it is from Vance and Nancy Eason from 112 Anchor Lane. They could not be here tonight so I will read the letter into the record.

Dear Board Members,

We have been property owners in York County since 1978. We have raised our family here. We are active in the school system with our children. We volunteer extensively in the community and more recently moved into our new waterfront home in May 2006.

We oppose approval of the Exception considered today, and further oppose questionable pier and deck structures built originally in the cove and more recently in the RPA and wetlands. For your consideration regarding the Pulliam's request:

*Shortly after purchasing our lot on Anchor Lane, we were contacted by Joe Sisler, York County EDS, and informed that we, as owners, would be accessed 35 bushes **due to illegal activity in the wetlands on our property by the Pulliam's.***

Pulliam's Phase 1 Pier was required to have a minimum 10 foot setback following our joint property line. Since it was built with wetlands violations, regulations were not followed. He recently informed us that he thinks he is grandfathered in.

The Pulliam's, their family, friends, and other neighbors utilized our property from 2001 to 2007 as the only access to their waterfront and pier around a natural pond on their lot. (Mr. Pulliam documented this fact on an RPA buffer application, in November of 2006) Their golf car was used on our property extensively for years.

The Pulliam's Phase 2 involved adding a boathouse and a Jet Ski pier, 4 X 11 feet, on the building permit and lift. The Jet Ski pier appears to be more of an 11 foot square.

In 2007, Mr. Pulliam informed us that he had permission to fill in the RPA in his backyard and fence it with brick columns wired for lighting on each column. In addition he would build a Phase 3 continuation of his pier over the pond. That was done as well as an additional approximately 100 square foot deck over the RPA.

This Spring Mr. Pulliam installed another Jet Ski lift clearly across the property line. He recently approached one of us, stated that he knew it was over our water rights and has since

removed it. However, after also offering to remove part of Phase 1 decking to give us both the required 10 foot setback, he has more recently refused indicating that his wife is opposed. The 10 foot allowance following our joint property line would provide them access to the cove without infringing on our water rights and safety.

The Pulliam's told us that they intend to install pavers and request a backyard pool using needs of elderly, extended family as an excuse. There have been no elderly living there since we have known them. We've so far never seen elderly, lovers of crabbing and fishing, even visiting his pier even though his golf cart is regularly on it.

VMRC and Army Corp. regulations limit the size of decking associated with private piers to 400 square feet. The Pulliam's pier appears to appreciably exceed that, especially with the last two phases in 2007. Decking should be removed to conform.

November 2006, Army Corp. Regional Permit 17, Certificate of Compliance...the Pulliam's clearly declare their compliance with the maximum 5 foot wide structure over wetlands vegetation. However, we understand the pier extension built last year is approximately 6 feet 6 inches wide. It should be altered to conform. There is no record of York County building permit neither for this structure nor for the additional illegal decking over the RPA.

Both we and other adjacent neighbors have had "Environmentally Sensitive" signs posted on our properties for over two years. We have to question why, if the RPA is a sensitive area, the Pulliam's have been allowed to create a backyard which is feet above its original topography and now well above joining neighbors topographies, fence it, sod it, irrigate it, regularly have it professionally chemically treated, and it seems will eventually light it. What's next a ...pool?

We questioned the Pulliam's history of wetlands violations exceeding permitted construction and constructing non-permitted decking. York County denied the request for pavers and suggested mulch. We ask you to also deny their Exception request.

Mr. Henkel continues: That was from Vance and Nancy Eason from 112 Anchor. **Mr. James:** I have a question. I know this is not your letter, but number one, out of ten items here, number one, would you read that again and see if you can explain that to me. **Mr. Henkel:** Where it says Pulliams, Phase one? **Mr. James:** No, it says shortly after purchasing the lot. **Mr. Henkel reiterates:** Shortly after purchasing our lot on Anchor Lane, we were contacted by Joe Sisler, York County, EDS, and informed that we, as owners would be accessed 35 bushes due to illegal activity in the wetlands on our property by the Pulliams. **Mr. James:** I don't understand that. **Mr. Henkel:** I know there was a violation there, but that may have been before my time. **Mr. James:** Ok, that's what I wanted to hear, the violation goes with the property owner. **Mr. Henkel:** Yes. **Mr. James continues:** Mr. Pulliam was the violator and the property owner had to...*Inaudible*... **Mr. Rolston:** And then if the property owner wants to take civil action against Mr. Pulliam he can, but the Board does not get involved in those actions. **Mr. James:** That's what I wanted to confirm. Thank you. **Ms. Drake:** That is correct. When Mr. Pulliam had the wetlands violation, remember there was the pond and the removal of trees and stuff like that, he went onto this neighbor's property so I am not quite sure what.... I was aware that he accessed the pier through the Eason's property. It was not their property when he built the pier, but I am

not sure what that 35.... We just got this letter today at 4:45 p.m., and I am not aware of any remediation they had to do. ...*Inaudible murmuring from Board members*... **Mr. James:** Is that a fact, as far as you're concerned, or just the letter. **Ms. Drake:** I would assume that paragraph one is an unconfirmed fact. **Mr. Rolston:** I think more germane is the fact that we are here to focus on one issue. This is bringing out a bunch of alleged violations and history, which I am not sure, is really germane to what we are supposed to be focused on. These would be things that could be looked at to see if there are violations or a separate action, maybe some of us not in our jurisdiction. To me, I would just be looking at what is the issue at hand which is the request to put in this walkway. **Mr. Russell:** Any additional questions to the Staff? **Dr. Briede':** I wasn't at the site visit. Is there a history with this site before the Board? **Ms. Drake:** Yes, it goes back to 2001, I believe. Kent prepared a chronology if, in fact, the Board wanted to review it, but it does have a lot of files. **Ms. Este:** Ok and the Staff's recommendation is a three-foot wide path with eco-stone.... **Ms. Drake interjects:** And the proper remediation. **Dr. Briede':** Would mitigation be different if we would allow a three foot wide path versus four foot wide path? Would the mitigation be the same? **Mr. Henkel:** There would just be less mitigation required and less square footage that is impacted. **Ms. Drake:** Of the same type just less of it. **Mr. Russell:** Any other questions for the Staff. All right. Thank you. At this time, we will open the public hearing concerning Exception 08-114. Is there anybody that would like to speak to this Exception? Please state your name and address.

1207
I am Norman Pulliam from 108 Anchor Lane: I have a disgruntled neighbor; obviously, but that stems from a long history of just weird stuff. I am here to protect the Bay, and the main thing on my sidewalk is that it is environmentally friendly. It is going to filter the water that comes off from my yard. I just don't see why if we install the walkway correctly, with the eco-pavers, the manufacturer says there are 100 percent permeable. When we bought the pavers, yes, everybody approved these pavers. We purchased them over a year ago, then we tried to get the permit. We have been going through this process for a year. The York County Staff has been very helpful in trying to lien in the direction of a new thing to be able to get to your pier. Like I said at the last meeting that I spoke at, what better way to encourage people to put in an infiltration ditch in their backyard? Everybody that has a pier, I am sure, would like to get to it without running through the lawn, through the mulch, gravel, lots of them have put concrete ones down. I have friends that they have just done it. I just think it is environmentally friendly way to get a walkway to the pier and filter the water. As people come in the future, maybe it will encourage them to get a permit, and install it correctly, and to help the Bay. We are trying to keep the nutrients out of the Bay. As far as the longevity, when they put the infiltration ditch into your yard, you are allowed to cover that with dirt. So that dirt is going directly into the infiltration ditch. We have a whole grid of the pavers that you saw on the pictures that is also going to help filter the dirt from getting into the infiltration ditch. The wider the sidewalk and the depth of the stone increases the capacity of the infiltration ditch. The minimum that you give me to ride a golf cart and also to be able to roll a wheelchair is just four foot six; it is environmentally friendly. That's all I....
...*Inaudible murmuring*... **Mr. Rolston:** I was the one that asked the question about the longevity of this thing. I don't doubt that it's probably a lot longer than a normal trench drain type of thing. I was just curious at some point, those pavers being on there or not, it is going to get covered with mud and stuff like that. I don't know when that would be or what you would do at that point. **Mr. Pulliam:** My solution would be is that you can use several different kinds of materials to fill the voids. You can use pea gravel, which would not clog up as easy. Even

masonry sand, which is very permeable, every three to four years. You can pressure wash the sand out, it can go into the yard, and you put a new topping of sand in those voids. I have gone, you know we clear land, we go into a property and dig a ditch two-foot wide, 150 feet long all the way around the house, put #1 stone in it, wrap it with cloth, and the people never have a problem again with the water, it helps dry the land out for a long time. **Mr. Rolston:** What is the width of your golf cart? **Mr. Pulliam:** I think it is right at four feet so that would give you three extra inches on each side to have to stay on there. **Mr. Rolston:** Did you consider, I don't know what the right term architecturally is, the two tracks so you know one for each wheel and each one whatever it was foot and a half or two foot wide. Did you consider that? **Mr. Pulliam:** I have considered that and that is an option, and they have approved that, but when you put a strip of grass in the middle, you are giving it more area to wash into the infiltration ditch. To where if the whole width was the stone, it is just going to give you a wider grate, basically like a drain in the street. **Mr. James:** Mr. Pulliam, at the site visit you indicated that you had a person in a wheelchair, and you need to get them to the pier. Does a handicap person live in your house? **Mr. Pulliam:** We do not have a handicap person living in our house. We both have older parents. Well, I guess we all do. **Mr. James interjects:** Be careful, they're both the same age as mine. ...Laughter... **Mr. Pulliam continues:** The County approved an elevator in our home. They approved a second kitchen on our second floor, and that was for the sole purpose for helping to take care of our parents as they got aged. They are not quite there yet, but we suspect that in the future. We have kids moving out and empty bedrooms, and that is what we plan on doing with our parents. To help take care of them as they get older. **Mr. James:** Okay. **Mr. Russell:** Any other questions for Mr. Pulliam? Thank you. Is there anyone else that would like to speak to Exception 8-114? Seeing none, we will close the public hearing. For the Board, what do you recommend? **Mr. Rolston:** Just my comments on it. Shirley was here and ^{John} but at the meeting where we came up with the three feet, and that was kind of arbitrary. It was a cutoff point for the Staff to use. I do not think it was ever intended to say it can't ever be beyond three feet. That was just their guideline, and then they come to us. That was I hate to say, arbitrary, I think it was reasonably thought out thing, but there is nothing magic about that restriction other than it is an administrative trigger for the Staff. **Ms. Estes:** Guideline. **Mr. James:** I think the State allows two and one-half feet. **Ms. Drake:** Two feet mulch path, stepping stones. **Mr. James:** Even the Staff if we went another foot past... (*Murmurs of assent from Staff*) **Mr. James continues:** Okay. **Dr. Briede':** What is the width of a wheelchair? **Mr. Rolston:** There are all different widths. **Unsolicited comment from audience:** If it was in a 36 inch door; it is usually about 30 to 32. **Ms. Drake:** That's right, American With Disabilities Act, doors have to be 36 inches for a wheelchair access. That's right. (*Inaudible commenting between Board during Ms. Drake's remarks*) [6:34:23] **Dr. Briede':** So the three foot path would accommodate a wheelchair. **Ms. Drake:** I think so. **Mr. James:** From my standpoint, I heard the Staff say that we had never approved anything over three feet before. **Ms. Drake:** We had never approved an eco-stone path before. We had decided with the Board that three foot, we would allow administratively three foot eco-stone paths. We have not received a request for one of those yet. Though, I do believe there are two waiting in the wings that are interested. **Mr. James:** The other thing is that there are no handicap people living in the house that would give us reason to change. If there was somebody there already, it might swing me toward this thing, but I am sorry, I can't support it. I would like to see some so more research on the fact that the pavers are more pervious than the material says. They look nice. I visited a place in Chesapeake just a couple of weeks ago that the entire driveway and the whole front yard

was with these things. But, I think with the amount of information that we have here as well as a tremendous amount of problems that we had here, it doesn't look like I can support this. I see that there is no reason that we should allow this Exception based on the information we have here. **Ms. Estes:** I feel the same way and support the Staff's recommendation. **Mr. Russell:** Okay. Several things, first of all, I guess the pavers this is the first time we are going to approve pavers of any size. There is also the issue of handicap. I have to agree with Captain James. Right now there is no one living in the house that requires this. For us to make an Exception, I think a handicap person needs be in the house in my personal opinion. The other thing that bothers me is that they are already at 17 percent. It is not like they were 5 percent; they are already exceeding the 16 percent limit so those are some things that I see that I am concerned with. I guess the question is that we, the Board Members, say we would agree with the foot path where they would separate the pavers for the two tracks.... **Dr. Briede' interjects:** I for one would rather see the three feet that takes away, to me, taking a golf cart to your pier, it borders on laziness, not on having people... (*Murmurs from Board members concerning this comment*) **Dr. Briede' continues:** ... No, that's why I am not saying it. I say borders on. You know not really as a handicap thing. I think a three foot path would be suitable, that's why I asked, would be suitable for handicap for wheelchair access. I think that would be very valid to me, to have two tracks, that would eliminate the ideal of having of being able to get a wheelchair there. **Mr. Russell:** Ok. What we have is we have two resolutions: 1) 08-114A which is to accept the Staff's ruling. Is that correct Anna? **Ms. Drake:** I do not have those in front of me. **Dr. Briede':** A is to reject the request. **Ms. Drake:** Is to reject the request...*inaudible comments*... **Ms. Drake continues:** At three foot, we would administratively approve it what you would be rejecting is the request is...*inaudible comments*... **Mr. Russell interjects:** The Exception. **Ms. Drake:** Yes. **Mr. Rolston:** But you could then, if the Board voted that way, then Mr. Pulliam could then come in with a two-track and that would be administratively approved. **Ms. Drake:** Yes. Yes, as long as the two of them do not exceed 36 inches in width. **Mr. Russell:** We need one of the members to decide which resolution they would like to put forth. **Mr. James:** Before we vote, I want to say on record that I absolutely do not agree with Jon's description that it borders on laziness. I just want to let you know that I am not a part of that. I don't believe that. That is totally out of order as far as far as I am concerned. **Dr. Briede':** I am very sorry said that sir. I should not have said that. **Mr. James:** Ok. I do know that my vote does not have anything to do with that. **Dr. Briede':** I'm sorry that I said that, I didn't mean it like that. **Mr. Russell:** I guess from now on lets try to keep the conversation based on the information that we have, and evaluate it on the information we have. Thank you. **Mr. Rolston:** I'd just like to make one more comment before we, before somebody makes a motion. One thing, disregard the history of the property, it is irrelevant. Two, remember that our three foot that we put, was our decision and it was based on something that had never been done before. We could easily at that time to have said four feet, five feet or six feet. We choose three feet. It is just something to think about because if you are going to say no you need to have a good reason to me. And, technically, if we accept the fact that this is a 100 percent pervious, than what have you lost with an extra foot and a half. I am just throwing that out to think about. **Mr. Russell:** Well, I want to talk to Staff. Is that confusing because you say that we have to mitigate so I am kind of confused. If it is 100 percent impervious, why are you mitigating something so.... **Ms. Drake:** The guideline, Kent, do you want to answer this? or I will give it a stab. The guidelines say that the buffer is supposed to be vegetated. It is supposed to be a 100 foot vegetated buffer. So any time you change that, you have to do mitigation. So that is why mitigation is involved. **Mr. Rolston interjects:** It

doesn't have bushes growing in it. **Ms. Drake:** It doesn't have bushes growing in it. Exactly. So granted you are going from grass to eco-stone pavers. They aren't removing trees or anything of that nature. They are above 16 percent so that is why the doubling of the mitigation. **Mr. Russell:** I guess the other question I have, you know, the concern we looked at it and I guess the State and everything is two and a half mulch is what they are authorizing. We discussed this and we thought that three foot was a reasonable amount. The question that I have is the fact that if this applicant wants four and a half, the next applicant wants five, the next one wants six, because they do not have a golf cart, they have a car and so they want to drive a car out there. Where do you go with this? I mean, you know, that is the thing that we have to look in the future whenever we authorize that it is going to allow others things to, you know, what is going to be our limit? Are we are going to say from three to no more than four and a half. That's the concern I have, that's one of the concerns I have here. **Ms. Drake:** Frankly, that's been a concern of Staffs. We've have known about these eco-stone pavers for a long time. We've had people that wanted to use them before. And we'd say well if we do consider them 100 percent pervious and just as good as a vegetated buffer, then could they do their whole backyard conceivably in it. That's, we've had a hard time and that is why vegetative plantings in the buffer are required also.

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Dr. Briede': CBLAD [*Chesapeake Bay Local Assistance Division*] has never said anything about this? ...inaudible murmuring... **Ms. Drake:** Kent brought it up; there is a form, an on-line (form). For instance, King and Queen County responded they would allow up to three foot eco-stone paver. James City County responded, and then CBLAD came in and the Director, the Division head of CBLAD, came in and stated a two foot wide. **Mr. Henkel:** They stated the guide (*CBLAD's guide*). **Ms. Drake continues:** They just reiterated the Guidance. Because, I think that they were hearing that localities were saying yeah, we'll do this, we'll do this. And they (*CBLAD*) came in and said remember the guidance says two foot wide mulch paths unless there are different circumstances. If you have a very steep slope, obviously mulch is just going to go to the bottom. We would allow wooden or stone or slate steps. Mr. Pulliam has made the argument here that the mulch keeps getting washing away on extreme tide events so. It (*CBLAD*) does give that allowance. **Dr. Briede':** But the two foot wide from CBLAD is mulch, it is not specifically eco-pavers. **Ms. Drake:** That's correct. Two foot wide and the only

impervious would be for stepping stones unless there is some person with disabilities and they talk about a compacted surface at that point. **Mr. Russell:** [*Speaking toward the audience*] Ms. Pulliam, do you have something else you would like to say. I have to open this public forum again, this meeting again. I just want to make sure if there is anything else from Staff. Ok, we re-open the public hearing. Please state your name and address please. **Katrina Pulliam:** Hi, my name is Katrina Pulliam, property owner. I just wanted to comment on the fact that you all are discussing whether somebody handicapped lives there yet or not someone I do not know what my neighbors have to do with saying anything such thing, but my husband's mother is very ill and we may be taking her on sooner than expected. But for my neighbors to come in here and write a letter and you even consider that nobody lives there that's handicapped is not fair, it is just not fair. My mother is already wheelchair bound. She is in Iowa, but I am going to end up with her. So, just please take that into consideration. They both still visit and we are just trying to make the whole house friendly to an elderly person. Who knows, maybe in the future, when we are not living there or if we are gone, the next people might be friendly and elderly and they can get down to the pier and do all those nice things that everybody else gets to do. **Mr. Russell:** Usually what we do as a Board, we look at the conditions of who is living in the house. What we have decided is that three foot is normal. Anything above three foot, if there is a

rationale for that, we would listen and we would discuss it and make a decision based on that. But it is hard for us to make a decision on possibly somebody moving into a house at some point. Our responsibility is to the ChesBay. We also look at the homeowner, and we try to work out. That is why the Staff cannot do this, because you have exceeded what their authority is associated with the rules that they have to abide by. So, you will have to come before us for any Exceptions, which you are doing. And so, we are just trying to, see when we allow you to do, we are allowing every other individual in the same situation to have that same right and privilege. We try to be fair and equitable to every other citizen in the RPA. And then, the question, the other question like I was saying you want four and one-half and somebody wants five they can come in and say that we are being unfair and unjust to them because they want five feet or six feet or whatever. This is the discussion. This is the first time we have had this and we have to discuss it. I guess that is one of the concerns that we do have. Also, I am still am concerned about the pervious amount 16 is supposed to be sort of our number, and you already exceed 16 with 17 percent prior to doing this. And so that is another thing we need to consider. So, we're not looking at we listen to the neighbor as far if they have a valid all the other stuff they talk about, that is hearsay. We don't know anything about that. That is up the Staff to go and take that and have the other areas to go and evaluate that. That's not, no it is not up to us to evaluate that part. We just take the facts and try to evaluate it utilizing the facts that we have.

Katrina Pulliam: Well, right, but since the neighbors brought that up. I just want to point that both parents do visit whether they've have seen them or not. They do visit they do exist. I just wanted to let that be known. That's all.

Mr. Pulliam: The first comment that you just made is that you are protecting the Bay. I am involved in homebuilding; I am Class A builder, heavy highway endorsed. As soon as somebody wants to make their home bigger on a piece of property, it does not even have to be on the water. The Staff says increase the size of your infiltration ditch. You've got to make your infiltration ditch bigger. I am volunteering to put one of them in my backyard. It just has impervious pavers on top of it that's going to let the water run directly through them into the ditch it doesn't have to go through grass, it doesn't have to go through sod, it's not going to have to go through leaves. It's 100 percent pervious and that's the whole reason of me seeking the eco-pavers, the eco-stones is to protect the Bay. And that was your first comment was that you are there to protect the Bay. You make the infiltration ditch smaller, you have less water capacity, there are going to be more nutrients running off, way more nutrients running off in the grass. I pour a bucket of water on the grass, it is running straight that way, if I pour it on this eco-pavers, it is going away, it's going in the ground and going into that gravel to settle in the ground, especially the first inch of rainfall. And, I mean I am not trying to sound funny, but it is a no brainer if you increase the size you know a golf cart is four foot six inches you know a wheelchair can roll down it. Encourage the people in York County to put in to put this ditch in their backyard. They don't have to sneak it in. They don't have to worry about if their neighbor going to call on them. They can do it. You know I have been in construction for 20 year and I can always find ten reasons not to do a job. All's I need is one reason to find that I can get that job done, and that is what this Board needs to do to find one reason to let someone do something in their own yard that is environmentally friendly. It's friendly to the environment; it is going to filter the water.

Dr. Briede': One question on that though, I mean, Mr. Pulliam, if you put an infiltration ditch down, do you, this path, I mean basically this is an infiltration ditch more or less underneath a path.

Mr. Pulliam: Yes.

Dr. Briede' continues: Are then creating a conduit that goes straight from the house right into your Bay because that is where the path runs?

Mr. Pulliam: The path runs down and it stops before it goes to the pier

there is a low area. I have an area to the side that I can dig a dry well and add more stone. I mean I am all for protecting the Bay and that's why I truly believe in what I am trying to install in my backyard is Bay friendly it's environmentally friendly. Nobody needs a car path to go down there; you know four foot six inches is not unreasonable and the bigger you make the ditch, the more water it's going to handle. Anna is that correct, when they increase the size of the house, or they want to make their driveway bigger, you make them make the ditch bigger. **Ms. Drake:** [Nods yes] However, um, we don't recommend infiltration trenches in the RPA. **Dr. Briede':** Yeah, we don't....**Mr. Pulliam interjects:** But they are all over the place in the RPA. I have another neighbor that you made him put one right next to three trees. He said isn't that going to kill those three trees? No. He just had to get a permit to take down those three trees because they died. And I, um, you guys done a wonderful job. You have been great to work with down there and I think that you guys, you know, are wanting to move on with the future and do things that are environmentally friendly to the Bay. There are lot piers out there, there is a lot of people that would like to make a path to their pier, why not help them to have them filter the water that is going into the Bay? **Mr. Russell:** Thank you Mr. Pulliam. Anybody have any other questions? **Dr. Briede':** What bothers, again, what bothers me a little bit hearing this I mean infiltration trenches; you are built parallel to keep water from entering the bay and everything else. Here, you are basically building a path towards the cove given an infiltration trench path underneath. What could happen that could happen is that it basically create a conduit running that water that infiltrates straight out into the Bay instead of allowing it to settle and to leave. That is something that bothers me somewhat and I am not sure if this is the correct way I am seeing this. But I mean it bothers me somewhat. **Mr. Russell:** Well, the thing is this will handle the first inch and absorb that. Then after that it may do that but it did its purpose I would think after the first inch of rain. But after that, it could potentially be a conduit. We don't know. Plus, it is not a straight run. It is sort of a 'C' type so it is not a straight run there. **Mr. Pulliam:** Towards the end of the path, I am willing to dig a three foot hole and fill that with stone which will slow down what you are talking about. It you take a filter off a cigarette, and you're getting straight nicotine. You put the filter on it, which that what the rocks are the filter to slow down that flow to the water. Running straight across the ground, it is going to run way faster than going into the sidewalk and filtering. **Mr. Garrett:** Greg Garrett, 122 Sand Box Lane, and I'm here for another reason, but I would like to speak in favor for Mr. and Mrs. Pulliam's application. There is a significant fundamental problem. It creates a dilemma for the Staff and for this Committee. That is that you have elevated protection of the RPA above protection of the Bay. If you'll back up and recognize that the issues is protection of the Bay not protection of the RPA. You will realize that there are ways to put in infiltration ditches in the RPA that is good for the Bay. I can give you an example of one at the end of Railway where it is completely absurd. The solution to correct a problem on the Peninsula was to put in an infiltration ditch on the landward side of Peninsula even though the driveway that it was supposed to be you know catching runoff from was on the seaward size of the Peninsula. That does not even make sense. That is the fundamental issue. You guys need to, in my opinion, re-evaluate what's important. What's important is protection of the Bay. You have to back off protection of the RPA, which is not the issue and that is not why the laws were enacted. **Mr. Russell:** Thank you. Anyone else have anything else to say. I think that since we just opened it back, it was mainly for the Pulliam's to speak on their behalf. We are going to close the public hearing. I guess the members, what is your opinion? You have heard the Pulliam's, and their concerns and their issues. [No comment from Board members] If no one has anything else to say I guess we have

to look at the resolution. I guess we are back to sort of what you are talking about. What is the minimum? I still have a concern, because if we go pass four and one-half, if we go four and one-half what are we going to do when the next one somebody ask for five. That is one of my concerns. **Mr. Rolston:** If you look the first question. Is the minimum necessary to afford the relief? I think you already answered your own question, no it's not. **Mr. James:** No. 2? **Mr. Russell:** Well, No. 2, if we say that if we give this applicant this privilege, then we would have to give all future applicants this privilege. That is the way I look at once we make this ruling. Unless we are saying that the only reason we would give special consideration is due to someone being handicapped. **Dr. Briede':** In other words, you consider this precedent setting not an exception, but the setting of a precedent. If we approve for four feet or four feet six inches now then you consider that basically we have to approve it in all other circumstances. Am I.... **Mr. Russell replies:** Yeah, that's what I'm asking. That's what I think what we are saying if we accept this that's my opinion. **Ms. Este interjects:** In essence, yes. **Mr. Russell:** That's my opinion. ...*inaudible Board comments*... It is up to everybody's opinion as to what they feel. **Mr. James:** And No. 4? ...*inaudible response for voice recognition*... No. 3. Is it in harmony with the purpose of the Chesapeake Bay? **Mr. Russell:** Well, they say it's zero percent. So, I don't see where.... **Mr. Briede' interjects:** I don't either. Exactly. **Mr. Russell continues:** I don't see where it hurts the Bay. **Mr. James:** The Exception was self-created. No. 4? It is a choice, we did not create this. **Ms. Drake:** No, It was created by the property owner. A self-created hardship would be a creating a lot that's all in the RPA, and you have no choice but to build in the RPA because you created a lot that's all in the RPA. **Mr. Russell:** Ok, since everybody, what is your recommendation? **Dr. Briede':** I think that, for me, to make a decision on this would be kind of hedges on what you mentioned here, whether this is an Exception or whether it's precedent setting. I think that is really what bothers me. If it is an Exception, I could go along with the request. If the Board thinks this is really precedent setting, that if we allow four foot six inches or whatever it is now, then from now on it would be four foot six inches, I would say I would vote no, but that really, that's really kind of where it ends for me. **Mr. Russell:** Do you have any comments? **Ms. Este:** It seems like it is precedent setting to me. **Mr. Rolston:** For the sake of getting things moving, I'll make a motion. Mr. Chairman, I move Resolution 08-114A that the application, the appeal be denied. **Mr. Russell:** Will the Secretary, any questions? Will the Secretary call the roll please?

Ms. Estes	Aye
Mr. James	Aye
Dr. Briede'	Aye
Mr. Rolston	Aye
Mr. Russell	Aye

Ms. Drake: Mr. Pulliam, did you understand, did you hear the Resolution. **Mr. Pulliam:** No, I did not hear it. **Mr. Russell:** The Resolution of 08-114A is to deny the approval of the Exception and we approved that. So we denied the four foot six inch paver pathway that you had requested. That does not mean you can't have a three foot paver, you would have to go back to York County and request that as a separate approval. You do have a 30 day appeal period. **Mr. Pulliam:** If I appeal, where does that go to? **Mr. Russell and Mrs. Drake:** York Circuit Court. **Mr. Pulliam:** Is there any particular reason that it is not being approved. Is it because of the infiltration factor? Or, I mean just. ... **Mr. Russell:** The reason that it was not approved was

the fact that it is setting precedence as far as we have already decided that we were going to have a three foot. A three-foot is what the Board had decided. We want to uphold that three-foot ruling. **Mr. Rolston:** Unless there is some exceptional reason that you need to have beyond that, and I do not think that was established with the Board. **Mr. Russell:** We determined that this was not an Exception. That it was a standard that we would abide by from then on for all of the other homeowners in the same situation that's in the RPA. **Mr. Pulliam:** So the infiltration of the water does not have anything to do it. **Mr. Russell:** Well, we have decided and ruled on that. I do not know how long, as far as appropriate, that we should be discussing it when we've already decided. **Mr. Pulliam:** I understand it's not the Bay it's about what you guys just want to decide to do.

End Verbatim Minutes (7:05:33)